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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,455	12/01/2000	Paul M. Yates	2711	2487

7590 12/20/2001

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EXAMINER

MARSH, STEVEN M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 12/20/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/728,455

Applicant(s)

YATES, PAUL M.

Examiner

Steven M Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 6-21 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 22-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This is the first office action for U.S. Application 09/728,455 for a Cushion with Lubricated Particulates and Method of Manufacture filed by Paul M. Yates on December 1, 2000.

Election/Restrictions

During a telephone conversation with Walter Hackler, Ph. D on December 1, 2001 a provisional election was made without traverse to prosecute the invention of a cushion, claims 1-5 and 22-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-21 and 35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5 and 22-34, drawn to a cushion, classified in class 248, subclass 918.
- II. Claims 6-21 and 35, drawn to a cushion and a process for making a cushion, classified in class 264, subclass 113.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process

Art Unit: 3632

(MPEP § 806.05(f)). In the instant case Applicant claims the cushion with a core having a sheet around it and sealing the core by providing a backing over the bottom of the cushion to trap the contents of the core between the backing and the sheet. The cushion claimed by Applicant could be made by another process such as sewing the mold around the core.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 22-34 are rejected under 35 U.S.C. 102(b) as being unpatentable over U.S. Patent 5,954,303 to Wolf et al. Wolf et al. discloses a cover (32) which is stretched and can be molded to a selected contour. The cover prevents leakage and has a backing (16) and disposed within the cover there is a core with a volume of separate, open-cell foam particulates (see fig. 2 and column 4, lines 56-67) which are compressible and wherein a liquid can be partially disposed. There is a gel (34, made of an oil) between the particulates which can enable lubricated movement of the particulates with respect to one another in response to an outside force applied to the cover and prevents sensing of the particulates by a user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 6,283,419 B1 to Silkworth et al.

U.S. Patent 5,228,655 to Garcia et al.

U.S. Patent 6,073,902 to Hiles

U.S. Patent 6,050,964 to Yates

U.S. Patent 5,702,375 to Angelillo et al.

U.S. Patent 5,445,349 to Hart

U.S. Patent 5,566,913 to Prokop

U.S. Patent 6,027,674 to Yates

U.S. Patent 5,566,395 to Nebeker

The above patents all disclose various types of support cushions.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone

Application/Control Number: 09/728,455

Page 5

Art Unit: 3632

number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

SMM *SMM*
Steven M. Marsh

December 17, 2001

[Signature]
KIMBERLY T. WOOD
PARENT EXAMINER
AU 3632